

STATE OF IOWA  
PROPERTY ASSESSMENT APPEAL BOARD

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**Jeffery D. Underwood**

Petitioner-Appellant,

v.

**Webster County Board of Review,**

Respondent-Appellee.

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**ORDER**

**Docket No. 09-94-0018**

**Parcel No. 004+0720414002**

On September 18, 2009, the above-captioned appeal came before the Iowa Property Assessment Appeal Board. The hearing was conducted under Iowa Code section 441.47A(2) and Iowa Administrative Code rules 701-71.21(1) et al. The appellant, Jeffery D. Underwood was represented by attorney Mark Crimmins, and participated by phone. The Webster County Board of Review designated Assistant County Attorney Cori Kuhn Coleman as its legal representation. The Appeal Board having reviewed the entire record and being fully advised, finds:

***Findings of Fact***

Mr. Underwood protested to the Webster County Board of Review regarding his property located at 111 S 17th Street, Fort Dodge, Iowa. The initial 2009 assessment for the subject property was \$55,660.

At the Board of Review, Mr. Underwood claimed that the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(b) and that there is an error in the assessment under Iowa Code section 441.37(1)(d). The assessment was lowered by the Board of Review as a result of the protest. The property assessment is now currently allocated as follows: \$3970 in land value and \$29,750 in improvement value for a total assessment of \$33,720.

To this Board, Mr. Underwood claimed that the property was not equitably assessed by law under Iowa Code section 441.37(1)(a); that the assessment is for more than authorized by law under section 441.37(1)(b); and that there has been a downward change in value under Iowa code section 441.35.

The grounds on appeal to this Board must be the same grounds made at the local Board of Review level. Iowa Code § 441.37A(1)(b). The grounds of inequity and downward change were not protested to the Board of Review, and we will not consider them. Of the original grounds appealed, only the ground that the property is assessed for more than authorized by law was brought to this Board, and this will be the only ground considered.

Mr. Underwood appealed to the Board of Review asserting that the subject property was purchased at auction in July of 2007 for \$19,000. He considered this amount to be the fair market value. The Board of Review acted unanimously to reduce the assessment from \$46,940 to \$33,720 due to the condition of the property. Uncontroverted testimony showed the property was in poor condition and suffering from significant structural issues at the time of the auction sale in July of 2007.

James Koll, an attorney and the seller of the subject property in 2007, testified on behalf of Mr. Underwood. Mr. Koll was the executor of his father's estate. He testified that he and his siblings wanted quick closure to the estate matters. Given the condition of the property and the desires for a quick sale, Koll believed that the best course of action was an auction sale, in "as is" condition. Koll testified that he felt the sales price of \$19,000 in 2007 was reflective of market value at that time and satisfied the estate. Koll testified that he did not recall that any formal market analysis had been completed prior to the auction, or if there was a minimum bid requirement.

Mr. Underwood also testified. He believes that the price paid for the property was market value at that time. However, he provided no evidence to support that the market value of the property in July of 2007 was the same as of the January 1, 2009 assessment date.

Jim Kesterson, Chair of the Board of Review, testified on its behalf. Mr. Kesterson stated that he is an appraiser in the Fort Dodge area and has been on the Board of Review for several years.

The Board of Review minutes indicate the auctioneer, Keith Dencklau, was interviewed by the Board. Mr. Kesterson confirmed through his testimony, that Mr. Dencklau's testimony led the Board to believe the seller was motivated. It is concerning to this Board that Mr. Dencklau was interviewed by the Board of Review without the property owner present.

The Board of Review did not submit any additional evidence to support that the assessed value is market value.

Given the testimony by both sides, regarding the known condition of the property, the current assessed valuation does not seem to be reflective of market value. As such, we recommend the Webster County Assessor consider an on-site, interior inspection of the subject property and consider re-evaluation in the next assessment to fully determine that the property is fairly assessed.

In the absence of any evidence for this Board to consider regarding the value as of January 1, 2009, we are left only with the choice of the current assessed valuation or the contention that the sale in 2007 reflects current market value. While there is no assumption that the assessment is correct, it is the petitioner's burden of proof to demonstrate the market value as of January 1, 2009. Based upon the foregoing, the Appeal Board finds that insufficient evidence has been presented to prove that the assessed value is more than authorized by law.

### ***Conclusions of Law***

The Appeal Board applied the following law.

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2009). This Board is an agency and the provisions of the Administrative Procedure Act apply to it. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal



Board determines anew all questions arising before the Board of Review related to the liability of the property to assessment or the assessed amount. § 441.37A(3)(a). The Appeal Board considers only those grounds presented to or considered by the Board of Review. § 441.37A(1)(b). But new or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption that the assessed value is correct. § 441.37A(3)(a).

In Iowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property's fair and reasonable market value. *Id.* "Market value" essentially is defined as the value established in an arm's-length sale of the property. § 441.21(1)(b). Sale prices of the property or comparable properties in normal transactions are also to be considered in arriving at market value. *Id.* If sales are not available, "other factors" may be considered in arriving at market value. § 441.21(2). The assessed value of the property "shall be one hundred percent of its actual value." § 441.21(1)(a).

In an appeal that alleges the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(b), there must be evidence that the assessment is excessive and the correct value of the property. *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277 (Iowa 1995).

In *Riley v. Iowa City Bd. of Review*, 549 N.W. 2d 289, 290 (Iowa 1996), the Court determined that, "It is clear from the wording of Iowa Code section 441.21(1)(b) that the sales price of the subject property in a normal sales transaction, just as the sale price of comparable property, is to be considered in arriving at market value but does not conclusively establish that value." While Mr. Underwood purchased the property in July of 2007 for \$19,000 and testimony was heard that would support this was a reasonable indication of market value at that time, no evidence was presented that supports this is the market value of the subject property as of January 1, 2009.

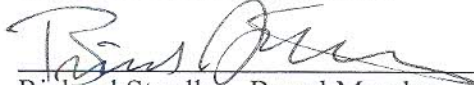
However, in light of the 2007 sale, as well as improvements to the property since that time, we believe the Webster County Assessor should consider an on-site, interior inspection of the subject property and consider re-evaluation in the next assessment to fully determine that the property is fairly assessed.

THE APPEAL BOARD ORDERS the property assessment of \$33,720 for the property located at 111 S 17th Street, Fort Dodge, Iowa, as of January 1, 2009, set by the Webster County Board of Review, is affirmed.

The Secretary of the State of Iowa Property Assessment Appeal Board shall mail a copy of this Order to the Webster County Auditor and all tax records, assessment books and other records pertaining to the assessments referenced herein on the subject parcels shall be corrected accordingly.

Dated this 8 day of October, 2009

  
Karen Oberman, Board Chair

  
Richard Stradley, Board Member

  
Jacqueline Rypma, Board Member

Cc:

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Certificate of Service	
The undersigned certifies that the foregoing instrument was served upon all parties to the above cause & to each of the attorney(s) of record herein at their respective addresses disclosed on the pleadings on <u>10-8</u> , 200 <u>9</u>	
By:	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> FAX
	<input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Courier
	<input type="checkbox"/> Certified Mail <input type="checkbox"/> Other
Signature	

